Supreme Court, U.S.
FILED

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No. _____

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IN THE
SUPREME COURT of the UNITED STATES

ROBERT LANCE WILSON, D.O.,
Petitioner,

v.

ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION; NIKKI M. ZOLLAR, former Director of the Illinois Department of Professional Regulation; and LEONARD SHERMAN, Director of the Illinois Department of Professional Regulation,
Respondents.

On Petition For Writ Of Certiorari To
The Illinois Court of Appeals, First Judicial District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Due to the destruction of the body of Dr. Wilson's patient before the autopsy report was issued and before any charges were filed against Dr. Wilson, were Dr. Wilson's constitutionally protected property rights and constitutional due process rights violated by the admission into evidence of the conclusions of an ex parte autopsy where Dr. Wilson was not accorded the opportunity to conduct an independent autopsy to challenge the conclusions of the ex parte autopsy?

2. Due to the sua sponte assertion of new allegations against Dr. Wilson on appeal where Dr. Wilson was not accorded the opportunity to defend himself and contest the new allegations against him, were Dr. Wilson's constitutionally protected property rights and constitutional due process rights violated by the decision of the Court of Appeals to reverse Judge Bush based on grounds that were not raised by any party, and grounds not supported by any evidence in the record?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

This petition seeks review of a decision of the Illinois Court of Appeals, First Judicial District, which is unreported and printed as Appendix A.[1] The decision of Circuit Court Judge Bernetta D. Bush restoring Dr. Wilson's medical license is unreported and reprinted as Appendix C. The findings of Judge Bush are unreported and reprinted as Appendix D. The decision of the Illinois Supreme Court denying discretionary review is unreported and reprinted as Appendix E.

JURISDICTION

The decision of the Illinois Court of Appeals was entered on November 18, 2003. (A1) A timely motion for rehearing was denied on December 26, 2003, and a copy of the order denying rehearing appears at Appendix B. On March 24, 2004 the Illinois Supreme Court denied discretionary review. (A30) The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

THE CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .."

STATEMENT OF THE CASE

This is a case of extreme importance to the People of this Nation, especially to terminally ill patients who are going through the painful process of death, and the doctors

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[1] References to the Appendices will be styled "A __".

who have to care for that terminally ill patient who is conscious during the terrifying process of death. This case does not involve euthanasia -- mercy killing of the type flaunted by the infamous Dr. Kervorkian. Rather, it involves a doctor's obligation to provide effective "palliative care" -- the duty of a doctor under American Medical Association Rule 2.20 to relieve not only a dying patient's pain, but suffering as well, even though the particular palliative treatment chosen by the doctor "may foreseeably hasten death". (AMA Rule 2.20)

After reviewing the entire record, the Circuit Court Judge, the Hon. Bernetta D. Bush, realized the importance this case to the People of the State of Illinois (R-A3-C71-72), and reversed the erroneous decision of the Department of Professional Regulation ("Department" or "DPR") to revoke Dr. Wilson's medical license for a period of five years. The Appellate Court, however, reversed Judge Bush based on an argument neither asserted by the Department on appeal, nor an argument which is supported by the facts.

Dr. Wilson's medical license has now been suspended for over five years, longer than the suspension recommended by the Department upon conclusion of the trial of this case. Judge Bush's April 10, 2002 decision would have brought finality to this process, but the Appellate Court has now reversed Judge Bush and sent the matter back down to the Department for the reopening of the trial. Accordingly, the whole litigation process will have to start-up all over again, with Dr. Wilson's medical license still subject to a "temporary" order of suspension, which has now been "temporarily" in effect for well over five years. Enough.

This Honorable Court can and should bring finality to this process, and bring an end to the over five years of

disgrace and humiliation that the Department has so far heaped on Dr. Wilson. As noted by the Illinois Supreme Court in Smith v. Department of Registration & Education, 412 Ill.332, 340-41, 106 N.E.2d 722, 728 (1952):

> It has been repeatedly held in this State that the revocation of a license of a [doctor] carries with it dire consequences. It not only involves necessarily disgrace and humiliation but it means the end of his professional career. In a proceeding so serious, due process of law requires a definite charge, adequate notice, and a full, fair and impartial hearing.

Accordingly, Petitioner Robert Lance Wilson, D.O. respectfully requests that a writ of certiorari issue to review the decision of the Appellate Court, First Judicial District, reversing, in part, the final decision and judgment of the Circuit Court, the Hon. Bernetta D. Bush, presiding.

A. Henry Taylor Was A Terminally Ill Patient Suffering From Superior Vena Cava Syndrome

By September of 1998 Henry Taylor was 69 years old and was very ill with end-stage renal (kidney) disease. (SR-4-C983; SR-3-C575 & 699) On September 18, 1998 Taylor developed edema (swelling) in his right arm, so Taylor's doctor, Dr. Don L. Hollandsworth, had Taylor admitted to Olympia Fields Hospital in Olympia Fields, Illinois. (SR-4-C983-84 #4; SR-3-C575-576; 572; SR-4-C990 #19)

It was subsequently determined that Taylor suffered from superior vena cava ("SVC") syndrome -- a potentially terminal condition whereby the return flow of blood from the upper part of the body to the heart is blocked, thus causing swelling of the soft tissue in the arms, head and

neck. During the progression of the disease, the backed-up blood searches for another route to return to the heart, but the other liquids within the blood then leak into the surrounding soft tissue, thus causing edema -- swelling of the tissue. Eventually SVC syndrome leads to swelling of the soft tissue in the neck, causing a compression of the trachea. This squeezing of the windpipe then results in difficulty in breathing (referred to as "air hunger") and eventual closure of the windpipe (referred to as "airway collapse"), and then "terminal suffocation" -- death through asphyxiation. (SR-2-C351-52; 356-57; 356-59 & SR-3-C609-11)

B. Taylor Requests That No Extraordinary Measures Be Utilized To Prolong His Life

Dr. Hollandsworth advised Taylor that he could suffocate to death because of SVC syndrome "if he did not allow resuscitative measures or other interventions." (SR-3-C611-12) When Dr. Hollandsworth talked to Taylor about a "DNR" (do not resuscitate) request, Taylor "unequivocally said he did not want intervention aggressive measures. And he signed his own DNR." (SR-3-C612) Thereafter Taylor signed his own DNR order, on two separate occasions, requesting no artificial ventilation to prolong his life. (SR-3-C591-92 & 612; SR-2-C366; SR-6-C1422 & 1424)

C. Taylor's Condition Worsens, But Taylor Again Refuses Intubation And Ventilation To Prolong His Life

By September 29, 1998 Taylor's edema from the SVC syndrome was getting worse, with Taylor now experiencing swelling in his face and neck. (SR-3-C586 & 609) At that

time Dr. Hollandworth realized that Taylor was "going down very fast." (SR-3-C586)

By the morning of September 30th the swelling in Taylor's neck had progressed to the point where it was starting to affect Taylor's ability to breathe. (SR-3-C388-89; SR-4-C984) At that stage of Taylor's SVC syndrome, "there was no medication that would shrink the [swelling] or relieve the pressure." (SR-3-C642-43) With Taylor's overall condition and advanced stage SVC syndrome, and with the DNR orders in place, it was just a matter of time before Taylor suffocated to death. (SR-2-C392, 425 & 497)

By the morning of September 30th Taylor started to have worsening edema of his shoulder and neck, and then started to complain of difficulty in breathing. (SR-3-C720-21) At around 8:00 a.m. Taylor was drooling and flailing about trying to breathe. (SR-2-C388-89 & 399) The resident doctor caring for Taylor, Dr. Teresa Muns, asked Taylor if he wanted to be intubated, but Taylor said "no". (SR-2-C390) According to Dr. Muns, Taylor was suffocating and was probably going to die within minutes. (SR-2-C390-91) At that point Dr. Muns paged Dr. Wilson, and gave Taylor a 2 mg shot of morphine to try to relieve Taylor's distress. (SR-2-C391-92)

D. Dr. Wilson Arrives To Find A Critically Ill Patient Suffering From Airway Collapse, Terminal Suffocation, And Consciousness Of Suffocation And Impending Death

Dr. Wilson was first called to assist Taylor at approximately 8:00 a.m. on September 30, 1998. (SR-2-C494) Dr. Wilson was a cardiologist with his practice in cardiovascular and critical care medicine. (SR-2-C460; SR-

3-C618; SR-4-C983) Dr. Wilson had been previously called in as a consultant by Taylor's attending physician, Dr. Hollandsworth, because of the cardiology aspects of Taylor's SVC syndrome. (SR-2-C493-94; SR-3-C580)

When Dr. Wilson arrived at Taylor's bedside shortly after 8:00 a.m., he found a patient who was suffocating to death with air hunger. (SR-2-C496 & 399-400) As admitted by the Department, Dr. Wilson "was called to Taylor's bedside and witnessed him suffocating to death as his trachea collapsed due to [SVC] syndrome." (DPR Br. p. 3) Dr. Wilson explained to Taylor that he was going to die without the insertion of a breathing tube (SR-2-C400), and asked Taylor if he could put a tube down Taylor's throat to help him breathe. (SR-2-C497; SR-3-C591) Taylor, however, refused Dr. Wilson's repeated requests for intubation. (SR-2-C497; 391; SR-3-C591-92)

Then Taylor's airway collapsed, thus cutting off all oxygen. (SR-2-C400; 422-24 & 357-59) Taylor had progressed from "air hunger" to "airway collapse", and Dr. Wilson was now faced with a condition of terminal suffocation. (SR-3-C542; 544 & 546) Thus, with the DNR orders in place, Dr. Wilson had to now care for a patient that was experiencing the conscious suffering of awareness of his impending death from suffocation. (Id.)

Dr. Wilson then administered another shot of morphine, this time 10 mgs. But the additional morphine did nothing to relieve Taylor's conscious suffering through his consciousness of the fact that he was irretrievably cast within the process of suffocating to death. (SR-2-C394-95; 417-18; SR-3-C538; C547) Dr. Wilson felt he had a duty to not only relieve Taylor's pain during the dying process, but also relieve Taylor's conscious suffering during the terrifying process of suffocating to death. (SR-3-C535)

E. Dr. Wilson Had A Duty To Not Only Relieve Taylor's Pain, But Also To Relieve Taylor's Suffering During The Process Of Death

"Palliative care" is the medical care rendered to a terminally ill patient to relieve that patient's pain and suffering during the process of death. (SR-2-C408-09; SR-3-C738; see 210 ILCS 60/3i) Pursuant to the American Medical Association Code of Medical Ethics Rule 2.20 (R-1-C196-197) ("AMA Rule 2.20"),

> [p]hysicians have an obligation to relieve pain and suffering and to promote the dignity and autonomy of dying patients in their care. This includes providing effective palliative treatment even though it may foreseeably hasten death.

(R-A1-197)[2] As admitted by the DPR's expert witness, Rule 2.20 "is a very good statement about obligations of physicians to relieve pain and suffering . . .." (SR-3-C738; see, also, SR-2-C408) Indeed, a caregiver's first responsibility is to relieve pain and suffering. (Barbiturates in the Care of the Terminally Ill, 327 New Eng.J.Med. 1678, 1680 (1992) (R-1-C200-203) (hereafter, "New Eng.J.Med."), cited with favor by the Department in connection with this appeal and by the United States Supreme Court in Washington v. Glucksberg, 521 U.S. 702, 780 (1997))

As mandated by Rule 2.20, a physician has a duty to not only relieve the patient's pain, but to also relieve the

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[2] The scope of a doctor's duty under AMA Rule 2.20 was a factual matter discussed during the trial. (See SR-2-C408-09; 417-18; SR-3-C538 & 547)

patient's suffering during the process of death. While the increasing dosage of morphine may have been effective in relieving Taylor's pain, it did nothing to relieve his suffering of the consciousness of his impending death through asphyxiation. (SR-2-C395 & 416-19)

Because Taylor was someone who would never breathe another breath, the options facing him were (1) conscious suffering, and then death; or (2) unconsciousness with no suffering, and then death. In the words of Justice Stevens, Taylor "no longer ha[d] the option of deciding whether to live or to die because [he was] already on the threshold of death . . .." Washington v. Glucksberg, 521 U.S. 702, 745 (1997) (concurring opinion by Justice Stevens).

As Taylor continued to flail about and suffer through consciousness of the process of death, Dr. Wilson had to make a quick decision on how best to relieve Taylor's suffering. While analgesics such as morphine are appropriate palliative care to relieve a dying patient's pain, in certain circumstances it is appropriate to use a potentially lethal agent to induce the unconsciousness of the patient, and thus relieve the patient's suffering during the process of death. (New Eng.J.Med. pp. 1679-81) Indeed, inducing unconsciousness of the patient through the administration of a potentially lethal but non-analgesic agent (referred to as "double effect") is appropriate palliative care (1) to relieve suffering when all other reasonable alternatives have failed; (2) to produce unconsciousness just prior to the death causing event; and (3) to produce unconsciousness as a means of relieving non-physical suffering, such as consciousness of impending death through the process of suffocation. (New Eng.J.Med. p. 1680)

As a cardiologist, Dr. Wilson was familiar with the drug potassium chloride (KCL), and was familiar with the double effect of potassium chloride to render a patient unconscious through the mechanism of "heart block". (SR-3-C538 & 547; SR-2-C417-18) Barbiturates, like potassium chloride, are not an analgesic (i.e., not used for pain relief) (New Eng.J.Med. p. 1681), but rather are a seizure medication. Further, barbiturates, like potassium chloride, are also routinely used in higher doses in the execution of prisoners by lethal injection. (New Eng.J.Med. p. 1678) While barbiturates "generally hasten a patient's death" (id. p. 1679), barbiturates, like potassium chloride, can, in an appropriate dose, have the double effect of rendering a patient unconscious. (Id. p. 1681; SR-2-C417-18)

It is well recognized that there is anxiety and fear associated with the inevitability of impending death that is not relieved by the mere administration of analgesics such as morphine. (New Eng.J.Med. pp. 1679-80) Accordingly, there is a sliding scale in the aggressiveness of the palliative care necessary to relieve suffering depending upon (a) the short-term certainty of death; and (b) the suffering associated with the patient's consciousness of the process of death. (See New Eng.J.Med. pp. 1679-81; Washington v. Glucksberg, 521 U.S. 702, 736 (1997) ("a patient who is suffering from a terminal illness and who is experiencing great pain has no legal barriers to obtaining medication, from qualified physicians, to alleviate that suffering, even to the point of causing unconsciousness and hastening death.") (concurring opinion by Justice O'Connor); Kansas v. Naramore, 25 Kan.App.2d 302, 965 P.2d 211, 214-15 (1998)) (SR-2-C417-19)

Here Dr. Wilson faced a patient who'd already received two shots of morphine, but was still suffering

through consciousness of the fact that he was irretrievably cast within the process of suffocating to death. (SR-2-C394-95; SR-3-C529, 538 & 547; SR-2-C393 & 395-96) It is appropriate palliative care to attempt to render a patient unconscious through the "double effect" of a potentially lethal drug when "the impending event is so psychologically distressing to the patient that mere pain control is not enough." (New Eng.J.Med. p. 1680; SR-2-C409, 413 & 417-18) And that is the situation that Henry Taylor was in, and that is the situation that was facing Dr. Wilson, at 8:24 a.m. on September 30, 1998. (SR-2-C417-18)

F. As Dr. Wilson Attempted To Relieve Taylor's Suffering By Rendering Him Unconscious, Taylor's Heart Stopped From Natural Causes And Taylor Was Officially Pronounced Dead

The increasing doses of morphine had done nothing to relieve Taylor's anxiety and suffering over consciousness of his impending death. (SR-2-C394-95; SR-3-C538) With his patient continuing to suffer, Dr. Wilson used the only immediately available drug that would render Taylor unconscious, and thus relieve Taylor's conscious suffering during the process of his certain death. (SR-2-C419 & 425; SR-3-C511; 538; 547 & 558) At 8:24 a.m. Dr. Wilson injected Taylor with 40 millequivalents (m/eq) of potassium chloride. (SR-2-C396-96a & 399)

As a cardiologist, Dr. Wilson knew that 40 m/eq of potassium chloride would have the "double effect" of rendering Taylor unconscious during the continuation of Taylor's process of death. (SR-3-C538 & 547) This was an appropriate dose to render Taylor unconscious in light of the fact that (a) 30 m/eq of potassium chloride was the standard dose to correct irregular heart rhythms in a study

of 100 patients, with some of those patients experiencing heart block, but none experiencing heart stoppage or death (SR-2-C413-15); and (b) the tolerance that Taylor had developed for potassium through his years as a kidney dialysis patient. (SR-2-C411-13; SR-3-C555) As admitted by the Department, Dr. Wilson "believed that administering potassium chloride was proper palliative care because it would render the patient unconscious rather than simply sedated." (DPR Br. p. 9)

As Dr. Wilson began the injection, however, Taylor's heart stopped; his heart monitor "flat lined"; and Taylor died from his underlying medical condition. (SR-2-C394-95 & 424-25; SR-3-C610 & 555) Taylor was formally pronounced dead at 8:25 a.m. (SR-2-C400)

G. After A Thorough Investigation, The Cook County State's Attorney Decides That The Evidence Does Not Support Charges Against Dr. Wilson

Based on the "story" that the Cook County Medical Examiner heard about the administration of potassium chloride (a potentially lethal drug), the medical examiner ruled Taylor's death a "homicide" by Dr. Wilson. (SR-5-C1134) The Cook County State's Attorney then conducted a thorough investigation into the death of Taylor. On September 28, 1999 Richard A. Devine, the Cook County State's Attorney, formally announced that the evidence did not support any criminal charges against Dr. Wilson. (R-A1-C205; SR-6-C1252; DPR Br. p. 5)

As admitted by the Department, "the evidence in the record does not demonstrate that [Dr.] Wilson engaged in euthanasia . . .." (DPR Br. p. 28) The DPR, however, continued to prosecute Dr. Wilson for alleged ethical violations, charging that Dr. Wilson engaged in unethical

conduct by "administer[ing] an injection of a combination of morphine and potassium chloride directly in the Henry Taylor which resulted in Henry Taylor's death." (SR-1-C62 ¶4) Clearly, the body of Taylor was crucial to the determination of this issue.

H. The Appellate Court Reverses Judge Bush Based On An Argument Neither Asserted By The Department Nor Supported By The Facts

On October 9, 1998 the Director of the Department temporarily suspended Dr. Wilson's medical license. (SR-1-C29) Upon conclusion of the administrative hearing, on March 2, 2000 A.L.J. Howe recommended that Dr. Wilson's medical license be suspended for a minimum of five years. (SR-4-C993) On April 5, 2000 the Department's Medical Disciplinary Board accepted A.L.J. Howe's recommendation (SR-4-C969), and on June 26, 2000 the Department's Director adopted the Medical Disciplinary Board's findings. (SR-6-C1304)

Upon hearing Dr. Wilson's Complaint on Administrative Review, Judge Bush reversed the decision of the Department based on the Department's violation of Dr. Wilson's constitutional rights to due process of law as to both the denial of a continuance and the improper admission into evidence of the conclusions of the ex parte autopsy. (R-A3-C75-76) The Appellate Court, however, reversed Judge Bush on the autopsy issue and sent the matter back down to the Department to reopen the trial based on (1) the alleged inaction of Dr. Wilson in seeking to conduct an independent autopsy; and (2) the alleged failure of Dr. Wilson to challenge the findings in the autopsy report. (A 14-17) Those arguments, however, were not asserted by the Department on appeal, and are not supported by the facts.

REASONS FOR GRANTING THE PETITION

Before the commencement of the trial, Dr. Wilson moved to bar any mention of the Cook County Medical Examiner's autopsy report into evidence because the body of the patient, Henry Taylor, had been destroyed (cremated) after the Cook County Medical Examiner had completed the autopsy, but before Dr. Wilson had the opportunity to conduct an independent autopsy. (DPR Br. p. 6; SR-2-C308-16) Although this conduct was in violation of Dr. Wilson's due process rights, A.L.J. Howe summarily denied Dr. Wilson's Motion. (SR-2-C316)

During the trial, the test results from the ex parte autopsy were admitted into evidence, and the Department's expert relied upon those test results in formulating his opinions in this case. (SR-3-C749-52) Judge Bush ruled that A.L.J. Howe erred in not barring the admission of the autopsy results into evidence when Dr. Wilson was not given the opportunity to conduct his own independent autopsy. (R-A3-C76)

The Appellate Court, however, reversed Judge Bush based on (1) the alleged inaction of Dr. Wilson in seeking to conduct an independent autopsy; and (2) the alleged failure of Dr. Wilson to challenge the findings in the autopsy report. (A 14-17) Accordingly, the points relied upon for granting the petition are:

(1) Due to the destruction of the body of Dr. Wilson's patient before the autopsy report was issued and before any charges were filed against Dr. Wilson, Dr. Wilson's constitutionally protected property rights and constitutional due process rights were violated by the admission into evidence of the

conclusions of an ex parte autopsy where Dr. Wilson was not accorded the opportunity to conduct an independent autopsy to challenge the conclusions of the ex parte autopsy;

(2) Due to the sua sponte assertion of new allegations against Dr. Wilson on appeal where Dr. Wilson was not accorded the opportunity to defend himself and contest the new allegations against him, Dr. Wilson's constitutionally protected property rights and constitutional due process rights were violated by the decision of the Court of Appeals to reverse Judge Bush based on grounds that were never raised by any party, and grounds not supported by any evidence in the record.

I. DUE TO THE DESTRUCTION OF THE BODY OF DR. WILSON'S PATIENT BEFORE THE AUTOPSY REPORT WAS ISSUED AND BEFORE ANY CHARGES WERE FILED AGAINST DR. WILSON, DR. WILSON'S CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS AND CONSTITUTIONAL DUE PROCESS RIGHTS WERE VIOLATED BY THE ADMISSION INTO EVIDENCE OF THE CONCLUSIONS OF AN EX PARTE AUTOPSY WHERE DR. WILSON WAS NOT ACCORDED THE OPPORTUNITY TO CONDUCT AN INDEPENDENT AUTOPSY TO CHALLENGE THE CONCLUSIONS OF THE EX PARTE AUTOPSY

The presumptive admissibility of an autopsy report under 725 ILCS 5/115-5.1 (A 16) does not abrogate Dr. Wilson's constitutional rights to due process of law in

connection with the revocation of his license to practice medicine. As noted by the Illinois Supreme court, "a license to practice medicine is a 'property right,' within the meaning of the constitutional guarantees of due process of law." Smith, 106 N.E.2d at 726. Moreover, the Illinois Supreme court has recognized that

> [t]he revocation of a license of a [doctor] carries with it dire consequences. It not only involves necessarily disgrace and humiliation but it means the end of his professional career. In a proceeding so serious, due process of law requires a definite charge, adequate notice, and a full, fair and impartial hearing.

Smith, 106 N.E.2d at 728 (emphasis added).

This is not a case where a defendant is seeking to have the charges against him dismissed because the state or the plaintiff lost or destroyed evidence. Rather, in this quasi-criminal proceeding (see In re Ruffalo, 390 U.S. 544, 551 (1968)), as a matter of due process in obtaining a "full, fair and impartial hearing" (see Smith, 106 N.E.2d at 728), it is fundamentally unfair for the Department to offer into evidence the conclusions from an ex parte autopsy (a medical test on the body of the decedent) when Dr. Wilson was not accorded an opportunity to test the validity of those conclusions by conducting an independent autopsy.

In Barker v. Bledsoe, 85 F.R.D. 545 (W.D.Okl.1979) the court barred the plaintiff in a medical malpractice case from introducing evidence about the conclusions from an ex parte autopsy where the body of the decedent was destroyed before the defendant had the opportunity to conduct an independent autopsy. As noted by the court in Barker,

> [t]he requirement of due process is not an ephemeral concept, confined to the criminal arena, but extends to all litigants the standard of fundamental fairness in federal court.

85 F.R.D. at 547.

After noting the fundamental unfairness of allowing a plaintiff to introduce into evidence the conclusions from an ex parte autopsy where the defendant was not accorded an opportunity to conduct an independent autopsy, the court in Barker concluded that a court of conscience is "not only empowered, but required to take appropriate action, either to dismiss the suit altogether, or to ameliorate the ill-gotten advantage." Id. at 548. Accordingly, the court in Barker -- a civil case -- barred the plaintiff from introducing into evidence the conclusions from an ex parte autopsy where the body was destroyed before the defendant could conduct an independent autopsy.

Judge Bush was correct in ruling that Dr. Wilson's due process rights were violated by the admission into evidence of the conclusions from the ex parte autopsy where Dr. Wilson was not accorded the opportunity to conduct an independent autopsy to challenge the conclusions of the ex parte autopsy. (A 26-29) Upon appeal, this Court should rule that the Appellate Court erred in reversing Judge Bush's decision.

II. DUE TO THE SUA SPONTE ASSERTION OF NEW ALLEGATIONS AGAINST DR. WILSON ON APPEAL WHERE DR. WILSON WAS NOT ACCORDED THE OPPORTUNITY TO DEFEND HIMSELF AND CONTEST THE NEW ALLEGATIONS AGAINST HIM, DR. WILSON'S CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS AND CONSTITUTIONAL DUE PROCESS RIGHTS WERE VIOLATED BY THE DECISION OF THE COURT OF APPEALS TO REVERSE JUDGE BUSH BASED ON GROUNDS THAT WERE NOT RAISED BY ANY PARTY, AND GROUNDS NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD

A. The Evidence Is Clear And Undisputed That Dr. Wilson Was Not Guilty Of Inaction In Connection With The Autopsy

In reversing Judge Bush's decision on the fundamental unfairness of allowing the Department to offer into evidence the conclusions from an ex parte autopsy where Dr. Wilson was not accorded an opportunity to conduct an independent autopsy (R-A3-C76-77), the Court of Appeals was critical of Dr. Wilson in not seeking to obtain an independent autopsy prior to the destruction of the crucial evidence -- the body of Henry Taylor:

> Although Dr. Wilson filed a motion in limine to bar the introduction of Taylor's autopsy report, Dr. Wilson never sought an independent autopsy. He is now seeking to use his inaction as a sword to strike down the Department's evidence.

(A 15) The Department, however, never raised laches/inaction as an issue on appeal. Further, the Court of Appeals overlooked or misapprehended the undisputed evidence on that issue. As shown by a full and fair reading of the record, the facts are clear and undisputed that Dr. Wilson had no opportunity and no duty to conduct an independent autopsy prior to the time that the evidence -- the body of Taylor -- was destroyed.

According to the death certificate (SR-6-C1290), Taylor was cremated on October 6, 1998. (Id.) While it is correct that the autopsy was commenced on October 1st (SR-1-C75), the autopsy report was not issued until October 8th (SR-1-C79), which was two days after the body had been destroyed. Accordingly, by the time the autopsy report was issued on October 8th, and the Department complaint against Dr. Wilson was filed on October 9th, the body of Taylor had already been destroyed.

The clear and undisputed facts of this case do not support a laches/inaction argument in connection with an independent autopsy of Taylor. Prior to the issuance of the autopsy report, and prior to the time that charges were filed against Dr. Wilson, there was nothing for Dr. Wilson to refute. By the time the autopsy report was issued on October 8th, and the Department's complaint against Dr. Wilson filed on October 9th -- when Dr. Wilson was first confronted with issues to refute -- Taylor's body had already been cremated, thus rendering any request for an independent autopsy a useless act. See Lewis v. Darce Towing Company, 94 F.R.D. 262, 271 & 272 (W.D.La.1983) The law is well-established that the law does not require a party to do a useless act. See Daven v. Downey, 378 Ill. 543, 555, 39 N.E.2d 45, 50 (1941).

The laches/inaction issue relied upon by the Court of Appeals was not raised by the Department as a basis to reverse Judge Bush's decision. Further, the clear and undisputed evidence shows that Dr. Wilson did not sit on his rights in seeking an independent autopsy. Because the evidence on that issue is, in fact, clear and undisputed in favor of Dr. Wilson, this Court should grant Dr. Wilson's Petition for Certiorari and, upon appeal, affirm Judge Bush's decision on the fundamental unfairness of allowing the Department to introduce into evidence the conclusions from an ex parte autopsy where Dr. Wilson was not accorded an opportunity to refute those conclusions by conducting an independent autopsy.

B. The Clear And Undisputed Facts Show That Dr. Wilson Did, In Fact, Claim That The Autopsy Report Was Erroneous, Faulty, Or Not Reliable, And That Dr. Wilson Had, In Fact, Challenged The Findings In The Autopsy Report

Based on another issue not asserted by the Department on appeal, the Court of Appeals ruled that Judge Bush erroneously reversed the decision of the Department to revoke Dr. Wilson's medical license "[b]ecause Dr. Wilson never challenged any findings in the autopsy report . . .." (A 15) As claimed by the Court of Appeals,

> no suggestion was made [by Dr. Wilson] that the autopsy report was erroneous, faulty, or not reliable. Absent such a showing, there is no basis to exclude the report. . . . Because Dr. Wilson never challenged any findings in the autopsy report, there was no basis to challenge the use of the [autopsy report] as competent evidence. Therefore, the admission of the autopsy report in this case cannot be error.

(A 15) The Appellate Court overlooked or misapprehended the clear and undisputed facts which show that Dr. Wilson did, in fact, claim "that the autopsy report was erroneous, faulty, or not reliable", and that Dr. Wilson had, in fact, "challenged" the findings in the autopsy report.

As noted by the Court of Appeals,

> [o]n the first day of the hearing, one of Dr. Wilson's attorneys, Mr. Zimmerman, made [a] motion[] to bar any mention of Taylor's autopsy report since Dr. Wilson had no opportunity to conduct an independent autopsy on Taylor's body.

(A 3-4) In Dr. Wilson's motion in limine (SR-2-C289), Dr. Wilson sought to exclude from evidence the conclusions from the autopsy report because the medical examiner who wrote the autopsy report, Dr. Kalelkar, was "wrong" in her conclusions in the autopsy report. (See SR-2-C290-91 ¶6)

Further, at the pre-trial hearing on Dr. Wilson's motion in limine, Dr. Wilson's counsel pointed out to A.L.J. Howe that

> the way that this body would have been relevant to Dr. Wilson's defense in this case is that the medical examiner in her autopsy report made certain findings which are contrary to the x-rays and other medical records that we have that are in this case. And some of those examples are set forth [in the written motion in limine]. * * * [The] autopsy contradicted objective x-ray and photographic findings.

(SR-2-C309-10 & 315) Accordingly, the record is clear that Dr. Wilson did, in fact, claim that the autopsy report was erroneous, faulty and not reliable, and that Dr. Wilson did, in fact, challenge the findings in the autopsy report.

Finally, as admitted by the Department,

> Wilson objected to the introduction of the autopsy report because Taylor's body had been cremated and was unavailable to Wilson to conduct his own autopsy. * * * Wilson contends that by conducting his own autopsy he could have cast doubt on whether the potassium chloride reached Taylor's heart before he died.

(DPR Reply Br. pp. 20 & 21) Indeed, although in the autopsy report Dr. Kalelkar concluded that the death of Taylor was attributed to "Potassium Chloride Intoxication", with SVC syndrome "significantly contributing to [Taylor's] death . . ." (SR-1-C79), Dr. Kalelkar's conclusion as to the alleged potassium chloride intoxication was not based on any medical testing done on the body of Taylor. Rather, Dr. Kalelkar's conclusion in the autopsy of death caused by potassium chloride intoxication was simply based on the "story" that she had heard about the fully-disclosed and fully-documented injection that Dr. Wilson had administered to Taylor. (SR-5-C1134)

Had the body of Taylor not been destroyed and had Dr. Wilson been able to conduct an independent autopsy on that crucial piece of evidence, Dr. Wilson would have been able to show, beyond any reasonable doubt, that (1) the potassium chloride from the injection did not, as alleged, result in Taylor's death; and (2) Taylor did, in fact, die from suffocation due to SVC syndrome. In short, although Dr. Kalelkar concluded in the autopsy report that SVC

"significantly contribut[ed] to [Taylor's] death" (SR-1-C79), an independent autopsy by Dr. Wilson would have been able to show that Taylor did, in fact, die from suffocation due to SVC syndrome.

The destruction of the body of Dr. Wilson's patient deprived Dr. Wilson of the ability to prove the administration of appropriate palliative care. Should this practice continue, other doctors -- rightfully fearful of losing their medical license -- would not render appropriate palliative care to their patients, who would eventually have to suffer unnecessarily during the final few moments of their lives as they unnecessarily agonized through the painful process of death. "In a proceeding so serious" (Smith, 106 N.E.2d at 728), Judge Bush was correct in ruling that it was unfair and a violation of Dr. Wilson's due process rights for the Department to admit into evidence the conclusions from the ex parte autopsy when Dr. Wilson was not accorded the opportunity to conduct an independent autopsy on the body of Taylor. (R-A3-C76)

The alleged failure of Dr. Wilson to challenge the validity of the findings in the autopsy report was not raised by the Department as a basis to reverse Judge Bush's decision. The clear and undisputed evidence shows that Dr. Wilson did, in fact, claim that the autopsy report was erroneous, false or not reliable, and that Dr. Wilson had, in fact, challenged the findings in the autopsy report. Because the evidence on that issue is, in fact, clear and undisputed in favor of Dr. Wilson, the Court should grant Dr. Wilson's Petition For Writ of Certiorari and, upon appeal, affirm Judge Bush's decision on the fundamental unfairness of allowing the Department to introduce into evidence the conclusions from an ex parte autopsy report where Dr.

Wilson was not accorded an opportunity to refute those conclusions by conducting an independent autopsy.[3]

C. Due To The Sua Sponte Assertion Of New Allegations Against Dr. Wilson On Appeal Where Dr. Wilson Was Not Accorded The Opportunity To Defend Himself And Contest The New Allegations Against Him, Dr. Wilson's Constitutionally Protected Property Rights And Constitutional Due Process Rights Were Violated By The Decision Of The Court Of Appeals To Reverse Judge Bush Based On Grounds That Were Not Raised By Any Party, And Grounds Not Supported By Any Evidence In The Record

A license to practice medicine (like a license to practice law) is a "property right" within the meaning of the constitutional guarantees of due process of law. See Smith, 106 N.E. 2d at 726; In re Ruffalo, 390 U.S. at 550. The decision of Judge Bush restored that property right to Dr. Wilson. (A 23-24)

The Court of Appeals, however, reversed the decision of Judge Bush -- took away Dr. Wilson's property right -- based on an argument that was not raised by any party, and an argument that was not supported by any evidence in the record. Since Dr. Wilson was not accorded any notice of the basis for the Court of Appeals to take away his property right (his license to practice medicine), and was not accorded an opportunity to present evidence in his defense on that issue, the decision of the Court of Appeals to

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[3] There were numerous other grounds to reverse and set aside the erroneous decision of the DPR which were not passed upon by Judge Bush. At a minimum, the Appellate Court should have sent the case back down to Judge Bush to rule on those other grounds.

reverse Judge Bush (on a ground not raised by any party and a ground not supported by any evidence) constitutes a violation of Dr. Wilson's Fourteenth Amendment right to due process of law. See Ruffalo, 390 U.S. at 551-52; English v. Cowell, 10 F.3d 434 (7th Cir. 1993)

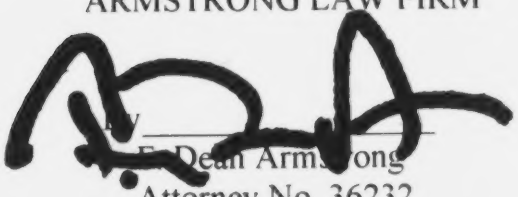
CONCLUSION AND PRAYER

Accordingly, Petitioner Dr. Robert Lance Wilson respectfully requests that: (1) the Court grant Dr. Wilson's Petition for Writ of Certiorari; (2) upon appeal, the Court (a) reverse that portion of the Court of Appeals' November 18, 2003 Opinion pertaining to the autopsy issue and the disposition of the appeal; and (b) affirm the April 10, 2002 decision and judgment of the Circuit Court; and (3) the Court grant Dr. Wilson such other and further relief to which he may be entitled, including giving immediate effect to the decision of Judge Bush and immediate relief from the over 5-year nightmare which has virtually destroyed Dr. Wilson's personal and professional life.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,
ARMSTRONG LAW FIRM

Dated: June 21, 2004.



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APPENDIX A

SECOND DIVISION
NOVEMBER 18, 2003

No. 1-02-1342

ROBERT LANCE WILSON, Plaintiff-Appellee,	) Appeal from the Circuit) Court of Cook County,) Chancery Division
v.	) No. 00 CH 1057
	) The Honorable) Bernetta D. Bush) Judge Presiding
THE DEPARTMENT OF PROFESSIONAL REGULATION; NIKKI M. ZOLLAR, former Director of the Department of Professional Regulation; and LEONARD SHERMAN, former Director of the Department of Professional Regulation, Defendants-Appellants.	))))))))

JUSTICE GARCIA delivered the opinion of the court:

In October 1998, the defendant, the Illinois Department of Professional Regulation (Department), filed an administrative complaint against the plaintiff, Robert Wilson, O.D., alleging (1) gross negligence (225 ILCS

60/22(A)(4) (West 1996)) (count I), and (2) dishonorable, unethical, and unprofessional conduct (225 ILCS 60/22(A)(5) (West 1996)) (count II). In November 1999, an administrative hearing was conducted. In March 2000, the administrative law judge (ALJ) recommended to the Department that Dr. Wilson's medical license be revoked for a period of five years. The Department implemented the ALJ's recommendation. In July 2000, Dr. Wilson filed his complaint for administrative review in the circuit court. In April 2002, the circuit court reversed and vacated the license revocation. We affirm in part, reverse in part the circuit court's rulings and remand to the Department for further proceedings.

BACKGROUND[1]

In mid-September 1998, Dr. Wilson, a licensed doctor of osteopathy specializing in cardiology, acted as a consultant in the treatment of Henry Taylor. Taylor was suffering from superior vena cava syndrome, a blockage of the main chamber of the heart, due to end-stage renal disease.

In late September 1998, Dr. Wilson was summoned to Taylor's bedside as Taylor began to suffocate due to a pulmonary compression on his trachea, a complication of superior vena cava syndrome. Previously, Taylor had signed do-not-resuscitate and do-not-intubate orders. In an attempt to relieve Taylor's pain, Dr. Wilson injected Taylor with at least 10 milligrams of morphine through an intravenous (IV) line into Taylor's femoral artery (near the groin). Taylor continued experiencing pain. Dr. Wilson then injected 40 milliequivalent of undiluted potassium chloride through the IV; Taylor died within one minute.

Later that day, Dr. Wilson reported his use of potassium chloride to Dr. Michael Settecase, the medical director of

Olympia Field's Osteopathic Hospital (Hospital). Drs. Wilson and Settecase reported Taylor's death to the Cook County medical examiner's office (Medical Examiner). The Medical Examiner conducted Taylor's autopsy, which revealed the cause of death to be potassium chloride intoxication; the manner of death was ruled a homicide. The Olympia Field's police department initiated a criminal investigation into Taylor's death; however, the Cook County State's Attorney decided not to criminally prosecute Dr. Wilson.

In early October 1998, the director of the Department, Nikki Zollar (Department Director), temporarily suspended Dr. Wilson's medical and controlled substance licenses. The Department then filed an administrative complaint against Dr. Wilson seeking to have his license suspended or revoked because of his use of potassium chloride. The Department's complaint charged Dr. Wilson with gross negligence and dishonorable, unethical, and unprofessional misconduct. See 225 ILCS 60/22(A)(4), (A)(5) (West 1996). In mid-November 1999, the Department conducted a disciplinary hearing before ALJ Phillip Howe and several panel members.

License Suspension Hearing, Day One

On the first day of the hearing, one of Dr. Wilson's attorneys, Mr. Zimmerman, made the following preliminary motions: (1) to dismiss the Department's proceedings, claiming they violated Dr. Wilson's due process rights; (2) to bar any mention of Taylor's autopsy report since Dr. Wilson had no opportunity to conduct an independent autopsy on Taylor's body; and (3) to have Dr. Wilson's expert testify out of order because of a scheduling conflict involving the expert. The ALJ denied Mr. Zimmerman's first two motions but granted the third.

Dr. Wilson's expert, Dr. Bruce Waller, a cardiologist and professor of cardiology, testified that the superior vena cava is the main chamber of the heart through which blood that has circulated throughout the body flows before being sent to the lungs to be oxygenated. After examining Taylor's premortem and postmortem X rays, Dr. Waller concluded Taylor's superior vena cava syndrome was the result of a blood clot totally obstructing the superior vena cava. The clot forced blood attempting to return to the heart to flow into adjacent blood vessels and soft tissue. The transposed blood caused edema (swelling), and as a result, Taylor's upper extremities (neck, arms, face, and eyes) became swollen. In Taylor's case, the accumulation of displaced fluid intensified the swelling in his neck, causing his trachea to compress, thus preventing air from entering his lungs, and as a consequence, Taylor began to suffocate.

Dr. Waller testified that notes in the physician's file made it clear that although Taylor had signed a do-not-resuscitate order, his treating physician asked if he wanted to be intubated. Taylor declined and Dr. Wilson was called. Dr. Waller testified that as Taylor's breathing became distressed, he was given 2 milligrams of morphine by the resident physician, 10 milligrams of morphine by Dr. Wilson, and possibly another 10 milligrams of morphine by Dr. Wilson. Dr. Waller testified that according to the file, the dopamine drip, which helps elevate blood pressure, was turned off, and as a result, Taylor's eyes rolled back into his head and his respiratory rate diminished. Dr. Wilson then administered undiluted potassium chloride.

Dr. Waller opined that the undiluted potassium chloride could not have reached Taylor's heart before it stopped due to the arterial blockage and respiratory distress Taylor was experiencing. Dr. Waller based his conclusion on a Norwegian study in which 30 milliequivalent of diluted

potassium chloride, gradually infused into the aortas of patients undergoing open-heart surgery, did not cause the patients' hearts to stop. On cross-examination, Dr. Waller admitted there was no blockage in the inferior vena cava, the path from the femoral artery (where the undiluted potassium chloride was introduced by Dr. Wilson) to the heart. However, Dr. Waller maintained Taylor died because of his underlying medical condition, and not because undiluted potassium chloride was administered.

Dr. Waller conceded potassium chloride is a dangerous and even lethal drug; however, he maintained that 40 milliequivalent was a reasonable amount to administer under the circumstances. On cross-examination Dr. Waller acknowledged he had never personally been present in a hospital setting where 40 milliequivalent of undiluted potassium chloride was administered to a patient. Dr. Waller testified that generally, potassium chloride is diluted before being administered. Dr. Waller also testified that the American Medical Association's (AMA) ethical rules permit the use of potassium chloride for palliative care.[2]

At this point, the Department was unable to finish its cross-examination because of Dr. Waller's scheduling conflict. The following dialogue ensued with the participants agreeing to recall Dr. Waller at a later date.

"MR. ZIMMERMAN: Your Honor, the witness needs to catch a plane, and as a matter of scheduling, I don't know how you want to handle that.

MR. GOLDBERG: Your Honor, may I suggest that the witness needs to get another plane. We need to finish our cross-examination if this witness's testimony is allowed to stand.

THE WITNESS: I am on call at five o'clock Indianapolis time.

[THE ALJ]: Folks, there are two possibilities.

MR. ZIMMERMAN: We can recall him.

[THE ALJ]: Folks, there are two possibilities. Either we continue today and recess and the doctor can reschedule whatever he has to do. From his previous statements and [the way] he's looking at me right now, I can tell he's thinking that's impossible, that's like moving the world, I can't do it.

The other possibility is that he comes back at another time. And the respondent got two hours and 45 minutes worth of time [for] direct exam[ination], and so therefore, the Department would get two hours and 45 minutes for cross-exam[ination]. It's now five after two, and my notes say we started the actual questioning at 1:23. So if we stop now, we [are] at 2:05, then we'll just have to schedule and have him come back later.

MR. ZIMMERMAN: Thank you, Your Honor.

[THE ALJ]: What says the Department?

MR. LYONS: I think that's a good plan.

* * *

[THE ALJ]: So, we are stopping at 2:11. Thank you, Doctor. We will reschedule you at another time. Do you have any time that's convenient for this month?

THE WITNESS: Yes, I'm sure this month. I just can't do it the next two days.

[THE ALJ]: Fine."

Following the testimony of Dr. Waller, the Department called Dr. Wilson as an adverse witness. Dr. Wilson admitted he administered 10 milligrams of morphine to Taylor and may have also given Taylor 10 more milligrams of morphine. Dr. Wilson administered the morphine through Taylor's femoral artery in order to quickly circulate it. In explaining his use of the femoral artery, Dr. Wilson explained, "[Taylor] was clotted up from above. That [morphine] would not circulate to the heart. If it can't get to the heart, it's not going to the brain." Dr. Wilson then conceded that morphine was used to relieve pain; however, Dr. Wilson concluded the morphine was not working fast enough to ease Taylor's pain and instructed a nurse to obtain undiluted potassium chloride although (1) he had never personally used undiluted potassium chloride on a dying patient, and (2) he had never seen undiluted potassium chloride administered to a dying patient. Dr. Wilson believed administering potassium chloride was proper palliative care because it would render the patient unconscious and relieve pain.

Dr. Wilson believed Taylor died of asphyxiation because at the time he was administering the potassium chloride, Taylor's trachea collapsed and he was not getting enough oxygen. Dr. Wilson based his assertion that Taylor died of asphyxiation on his observations that (1) Taylor's airway had collapsed and he was at the point of dying when the potassium chloride was administered, and (2) Taylor was dead within one minute of the potassium chloride being administered.

Dr. Don Hollandsworth, a staff physician at the Hospital and Taylor's treating physician, testified for the Department that the use of morphine is ethically appropriate palliative care. Dr. Hollandsworth testified he would not use undiluted potassium chloride to relieve pain during the dying process.

Next, Dr. Settecase, the medical director of the Hospital, testified for the Department that he had never used undiluted potassium chloride or seen it used in the manner Dr. Wilson used it. Later a panel member asked Dr. Settecase the following question, "Doctor, if you know, is potassium chloride the drug that's used for lethal injection[?]" In response to the question, Dr. Settecase testified he believed that potassium chloride was used by the Illinois Department of Corrections for lethal injections. Dr. Wilson's attorneys objected to this line of questioning and Dr. Wilson yelled, "I am out of here!" Dr. Wilson's attorneys moved for a mistrial, their motion was denied, and they left the hearing room. The hearing was then recessed for lunch.

Although neither Dr. Wilson nor his attorneys returned to the hearing room after lunch, the Department continued to present evidence. Dr. Mark Siegler, an expert in clinical medical ethics, testified that potassium chloride was an extremely dangerous drug and if given in an undiluted form, could cause the heart to stop. Dr. Siegler testified:

"[T]he idea of potassium being an extremely dangerous drug, extremely dangerous chemical, is well understood; and the fact that nobody, in my experience, has ever injected 40 milliequivalent of potassium directly into a human being, that I have ever witness[ed] or that I have

ever done, makes me think that this is a drug that is understood to have the likelihood, given quickly enough and [in] a high enough dose as 40 milliequivalent injected as a bolus, to stop the heart."

Dr. Siegler also testified that the Norwegian medical study relied on by Dr. Waller is distinguishable from the facts surrounding Taylor's death because (1) the potassium chloride used in the Norwegian study was diluted, and in this case, Dr. Wilson administered undiluted potassium chloride; and (2) the potassium chloride used in the Norwegian study was gradually circulated through the patients' bodies; however, in Taylor's case, Dr. Wilson administered undiluted potassium chloride through an IV directly to the heart by way of the femoral artery. Dr. Siegler speculated the potassium chloride would have reached Taylor's heart within 30 seconds to one minute after it was administered. Dr. Siegler testified his estimation was corroborated by Dr. Wilson's own testimony regarding his observation that Taylor died within one minute of the potassium chloride being administered.

Dr. Siegler's testimony asserted morphine was effective for palliative care because it decreased hunger and pain, reduced respiration, and induced sleep. Dr. Siegler also stated that since potassium chloride is more likely than morphine to cause asystolia (heart stoppage) and death, it is not ethically acceptable under the AMA ethical rules governing palliative care. Dr. Siegler concluded in his testimony that Dr. Wilson's conduct was reckless, disregarded Taylor's well being, and violated the ethical standards of the medical profession.

Emiliana Durante, the nurse attending Taylor, testified morphine was available in the critical care unit where Taylor was treated. However, potassium chloride was only

available in the intensive care unit. Durante retrieved potassium chloride from the intensive care unit at Dr. Wilson's request. Further, although Durante had been a nurse since 1977, she had never seen potassium chloride administered in an undiluted form. With her testimony, the Department rested its case in chief.

License Suspension Hearing, Day Three

On the third day of the license suspension hearing, Mr. Zimmerman appeared on behalf of Dr. Wilson. Dr. Wilson was not present. The ALJ told Mr. Zimmerman that the Department had rested and invited him to present more of his case. Instead, Mr. Zimmerman requested the Department's proceedings be stayed pending the outcome of Dr. Wilson's motion in the federal court to enjoin the Department's administrative proceedings. Mr. Zimmerman also informed the ALJ that his client would not participate in the administrative proceedings unless the federal court abstained from enjoining the hearing. The ALJ denied the motion because (1) numerous continuances had been granted to Dr. Wilson, (2) Dr. Wilson's disruptive conduct led to his voluntary absence from the hearing, and (3) procedural mechanisms were available for reopening the case. Mr. Zimmerman then left the hearing room, the Department presented its closing argument, and the ALJ announced, "we will close the hearing."

The federal court refused to enjoin the administrative proceedings, and in late December 1999, Mr. Zimmerman sought to reopen proceedings in order to (1) continue Dr. Waller's cross-examination and (2) present redirect testimony of Dr. Waller because Mr. Zimmerman believed the Department had reintroduced a charge that Dr. Wilson engaged in euthanasia. The Department argued that only Dr. Waller's cross-examination was cut short and, thus,

only the Department was prejudiced by the unfinished testimony. The ALJ agreed with the Department and Dr. Wilson's motion to reopen the proceedings was denied.

In March 2000, the ALJ issued his findings after considering the testimony, medical records, medical studies, and Taylor's autopsy report. The ALJ concluded that Dr. Wilson committed gross negligence and acted dishonorably and unprofessionally in injecting Taylor with potassium chloride. The ALJ found Dr. Siegler particularly credible and Dr. Waller unconvincing. Further, the ALJ found Dr. Wilson's testimony self-serving and not credible. The ALJ recommended Dr. Wilson's professional license be revoked for a minimum of five years and reinstatement be conditioned on (1) a finding of mental fitness and (2) completion of ethical education classes.

In April 2000, the Department's medical disciplinary board (Disciplinary Board) accepted the ALJ's recommendations. In June 2000, the Department's Director adopted the Disciplinary Board's findings.[3]

In July 2000, Dr. Wilson filed his complaint for administrative review in the circuit court, arguing: (1) the Department Director's decision was against the manifest weight of the evidence; (2) the ALJ had abused its discretion in refusing to reopen the proceedings to continue Dr. Waller's testimony; and (3) the ALJ committed reversible error in not barring Taylor's autopsy report.

In April 2002, the circuit court stated:

"In reviewing the standard in which I would look at this case, the question is whether I would follow the standard of administrative review which would state that if there is anything in the record to support the agency's decision, I

was duty bound to affirm that decision, or if I would view this as [a] matter for *de novo* review. Given the natures, the issues in this case, the questions of law, whether there was a breach of due process procedures, [this] court believes that the review that it must utilize in this case is the *de novo* [standard of] review because there are questions of law that must be determined, rather than the lesser standard of if there is anything that manifests the evidence to support the agency's decision."

In reviewing the Department Director's decision *de novo*, the circuit court reversed and vacated the decision to revoke Dr. Wilson's medical license. The circuit court did not find the Department Director's revocation of Dr. Wilson's medical license against the manifest weight of the evidence; instead, the circuit court determined (1) the ALJ's denial of Dr. Wilson's request to bar the autopsy report was reversible error, and (2) the ALJ's refusal to reopen the proceedings and allow Dr. Wilson to recall Dr. Waller violated Dr. Wilson's right to due process. Regarding the autopsy report, the circuit court stated, "[Dr. Wilson] did ask that the evidence of the autopsy be barred because [Dr. Wilson] did not have an opportunity to review the body. I believe that was a proper motion, and that motion should have been granted. And I believe that, in addition to the denial of the expert witness, constituted reversible error."

ANALYSIS

The parties have asked us to decide whether the ALJ abused his discretion when he (1) admitted Taylor's autopsy report into evidence and (2) refused to reopen the administrative hearing proceedings to allow Dr. Waller to be reexamined.

Generally, this court reviews the final decision of an administrative agency and not the decision of the circuit court. *Goumaris v. City of Chicago*, 321 Ill. App. 3d 487, 491, 747 N.E.2d 1025 (2001), citing *Home Interiors & Gifts, Inc. v. Department of Revenue*, 318 Ill. App. 3d 205, 209, 741 N.E.2d 998 (2000). However, because the circuit court reversed the license revocation based on certain legal grounds, we begin our review of the Department Director's decision with the basis for the circuit court's reversal to determine whether its reversal is founded in law. See, generally, *Ikpoh v. Zollar*, 321 Ill. App. 3d 41, 746 N.E.2d 776 (2001) (circuit court upheld in part administrative agency's decision and remanded for further proceedings; on appeal circuit court order found not final and appealable.) If so, we should affirm; if not, we may reverse.

I. Taylor's Autopsy Report and Examination of Dr. Waller[4]

Agencies have broad discretion in conducting administrative hearings. *Sheehan v. Board of Fire & Police Commissioners*, 158 Ill. App. 3d 275, 286, 509 N.E.2d 467 (1987). However, "a license to practice medicine is a 'property right,' within the meaning of the constitutional guarantees of due process of law." *Smith v. Department of Registration & Education*, 412 Ill. 332, 340-41, 106 N.E.2d 722 (1952). Therefore, the basic due process rights of fairness and impartiality must be respected. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 92-93, 606 N.E.2d 1111 (1992).

The circuit court in this case found "a question of law" in the issues presented by this case as "whether there was a breach of due process procedures" in the ALJ's denial of Dr. Wilson's (1) motion *in limine* to exclude the autopsy report and (2) motion to reopen proceedings and recall Dr.

Waller. The circuit court used a *de novo* standard of review in its analysis of the issues. In the context of appellate review of an administrative agency's decision, a *de novo* standard of review is limited to "interpretation of a statute." *Cole v. Department of Public Health*, 329 Ill. App. 3d 261, 264, 767 N.E.2d 909 (2002). Therefore, the circuit court's use of a *de novo* standard in this case was error. An administrative agency's decision regarding the conduct of its hearing and the introduction of evidence is properly governed by an abuse of discretion standard and subject to reversal only if there is demonstrable prejudice to the party. See *Bickham v. Selcke*, 216 Ill. App. 3d 453, 459-60, 576 N.E.2d 975 (1991).

A. Taylor's Autopsy Report

The Department argues that the circuit court erred in finding reversible error in the ALJ's decision to allow the Medical Examiner's autopsy report into evidence. Dr. Wilson argues the ALJ did err in admitting the results of Taylor's autopsy into evidence because Dr. Wilson was not able to conduct an autopsy independent of the Medical Examiner. The circuit court stated that, "while [Dr. Wilson] didn't subpoena the parties or ask to bring [the parties] in," Dr. Wilson's motion to bar the autopsy evidence was proper and should have been granted. We agree with the Department that the circuit court was incorrect as a matter of law.

Following Taylor's death, the Medical Examiner conducted an autopsy that revealed the cause of death as potassium chloride intoxication. Taylor's body was then released to his family. Dr. Wilson had no right to conduct an independent autopsy on the body of Taylor without the explicit permission of Taylor's next of kin. *Rekosh v. Parks*, 316 Ill. App. 3d 58, 68, 735 N.E.2d 765 (2000) (while there

is no property right in a decedent's body, the next of kin have a right to the possession of a decedent's remains in order to make an appropriate disposition thereof). Therefore, permission to independently autopsy Taylor's body did not rest with the Medical Examiner or the Department; instead, permission could only be granted by Taylor's next of kin.

Although Dr. Wilson filed a motion *in limine* to bar the introduction of Taylor's autopsy report, Dr. Wilson never sought an independent autopsy. He is now seeking to use his inaction as a sword to strike down the Department's evidence. Moreover, no suggestion was made that the autopsy report was erroneous, faulty, or not reliable. Absent such a showing, there is no basis to exclude the report. The records of a Medical Examiner will be received as competent evidence in any criminal or civil action. See *Heitz v. Hogan*, 134 Ill. App. 3d 352, 357, 480 N.E.2d 185 (1985); 725 ILCS 5/115-5.1 (West 1996) ("In any civil or criminal action the records of the coroner's medical or laboratory examiner summarizing and detailing the performance of his or her official duties in performing medical examinations upon deceased persons *** shall be received as competent evidence in any court of this State"). Because Dr. Wilson never challenged any findings in the autopsy report, there was no basis to challenge the use of the Medical Examiner's death certificate as competent evidence. Therefore, the admission of the autopsy report in this case cannot be error.

Dr. Wilson urges us to follow the decisions of *People v. Newberry*, 265 Ill. App. 3d 688, 638 N.E.2d 1196 (1994), and *People v. Dodsworth*, 60 Ill. App. 3d 207, 376 N.E.2d 449 (1978); however, those cases are readily distinguishable. Both involved criminal defendants charged with controlled-substance-related offenses that sought to

bolster their defenses by testing substances the State identified as illegal. Dr. Wilson's reliance on criminal law standards regarding the destruction of evidence is misplaced. Although due process rights are present in both civil and criminal cases, even criminal due process, which affords greater protection, does not mandate "an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance." *Arizona v. Youngblood*, 488 U.S. 51, 58, 102 L. Ed. 2d 281, 289, 109 S. Ct. 333, 337 (1988).

The admission of the Medical Examiner's autopsy report and denial of Dr. Wilson's motion *in limine* to exclude it were evidentiary issues. An administrative agency's decision regarding the admission of evidence is discretionary and should be reviewed as such. *Morelli v. Ward*, 315 Ill. App. 3d 492, 497, 734 N.E.2d 87 (2000). Our legislature has deemed the result of a Medical Examiner's inquest sufficient for evidentiary purposes. See 725 ILCS 5/115-5.1 (West 1996). Based on the presumptive admissibility of the autopsy report and the absence of any substantive challenge to the contents of the report, we reverse the circuit court and find that the ALJ's decision to allow the autopsy into evidence was not an abuse of discretion. *Morelli*, 315 Ill. App. 3d at 497.B. Motion to Reexamine Dr. Waller

The ALJ denied Dr. Wilson's motion to reopen the proceedings and recall Dr. Waller. The Department argues the ALJ did not abuse his discretion in refusing to give Dr. Wilson the opportunity to recall Dr. Waller because (1) Dr. Wilson refused to participate in the administrative proceedings, (2) Dr. Wilson was not diligent in preserving his rights, and (3) there was no prejudice. Dr. Wilson argues the ALJ's denial of his motion to reopen the proceedings violated his due process rights.

The circuit court found the ALJ's denial of Dr. Wilson's motion to reopen the proceedings and recall Dr. Waller was reversible error. Although the circuit court used an incorrect standard of review in its analysis of this issue, we find the ALJ did abuse its discretion in failing to grant Dr. Wilson's motion. See *Bickham*, 216 Ill. App. 3d at 459-60 (an administrative agency's decision regarding the conduct of a hearing is governed by an abuse of discretion standard).

Although we review the ALJ's denial of Dr. Wilson's motion to reopen with great deference (*People v. Coleman*, 183 Ill.2d 366, 387, 701 N.E.2d 1063 (1998)), the revocation of a professional license carries with it dire consequences (*Smith*, 412 Ill. at 344). "In a proceeding so serious, due process of law requires a definite charge, adequate notice, and a full, fair and impartial hearing." *Smith*, 412 Ill. at 344. Therefore, under the circumstances of this case, justice demanded Dr. Wilson be given a reasonable opportunity to recall his expert witness. *Lindeen v. Illinois State Police Merit Board*, 25 Ill. 2d 349, 352, 185 N.E.2d 206 (1962).

Even though Dr. Wilson did not aid his case by leaving the administrative hearing, his decision to walk out of the proceeding did not abridge his right to a full opportunity to present his case. Moreover, although the Department did not pursue its right to a complete cross-examination of Dr. Waller, Dr. Wilson's right to redirect his expert witness is independent of the State's decision whether or not to continue with its cross-examination. See *Six-Brothers King Drive Supermarket, Inc. v. Department of Revenue*, 192 Ill. App. 3d 976, 983-84, 549 N.E.2d 586 (1989) ("[b]asic notions of fair play require that parties have an opportunity to cross-examine, explain or refute facts which form the basis for an administrative agency's adjudication").

Dr. Waller's testimony ended in the midst of the Department's cross-examination. The ALJ, the Department, and Dr. Wilson's attorneys agreed Dr. Waller *would be recalled at a later date*. At the time of the agreement, Dr. Waller made it clear he was not available until *after* November 18, the third and final day of the hearing. Therefore, Dr. Waller could have returned to testify at the hearing as early as November 19. Such a short delay would have presented no prejudice to the Department but would have allowed Dr. Wilson a full opportunity to present his case, as justice requires.

"[D]espite the added expense and inconvenience rescheduling the hearing might have caused [the Department] *** the reason[s] for the continuance [were] legitimate; granting it was required to meet the ends of justice." *Ullmen v. Department of Registration & Education*, 67 Ill. App. 3d 519, 523, 385 N.E.2d 58 (1978). In the first instance, Dr. Wilson was not able to testify until *after* November 18, the date Dr. Wilson was scheduled to continue with his defense. Further, because Dr. Wilson called Dr. Waller to testify at the beginning of the administrative hearing, Dr. Waller was unable to dispute the testimony of the Department's experts regarding whether or not undiluted potassium chloride was a proper palliative agent. Moreover, in its brief to this court the Department admits, "the question of ethics and professional responsibility in caring for dying patients was a matter for the experts: [Drs.] Waller and Siegler." Significantly, the ALJ found the testimony of the Department's expert, Dr. Siegler, more convincing than the testimony of Dr. Wilson's expert, Dr. Waller, although Dr. Waller's testimony was incomplete.

Although we agree that the ALJ was correct in not delaying the Department's proceedings against Dr. Wilson while he

pursued an action in federal court, there is a difference between holding proceedings in abeyance and limiting the evidence that may be presented for consideration. "A continuance required by the ends of justice should not be denied, and a refusal to grant such a continuance has been held to be an abuse of discretion warranting reversal." *Ullmen*, 67 Ill. App. 3d at 522, citing *Brown v. Air Pollution Control Board*, 37 Ill. 2d 450, 454-55, 377 N.E.2d 1297 (1967). An administrative agency possesses broad discretion in determining whether to allow a continuance. *Wegmann v. Department of Registration & Education*, 61 Ill. App. 3d 352, 357, 377 N.E.2d 1297 (1978). "Such discretion, however, 'must be exercised judiciously, and not arbitrarily' so as to satisfy the ends of justice." *Bickham*, 216 Ill. App. 3d at 459, quoting *Brown*, 37 Ill. 2d at 454. "Under the special circumstances of this case, it is our opinion that the ends of justice and due process would have been better served if [Dr. Wilson's] request [to reopen the proceedings] had been allowed." *Smith*, 412 Ill. at 343. Based on our review of the administrative hearing, we find that in considering Dr. Wilson's motion to reopen the proceedings so that he could present a complete defense by calling his expert witness in redirect and possible rebuttal to the State's expert, the ALJ abused his discretion in denying Dr. Wilson's motion.

Therefore, because it was an abuse of discretion to deny Dr. Wilson's motion to reopen the proceedings in order to recall his expert, Dr. Waller, the matter should have been remanded by the circuit court. See *Brown*, 37 Ill. 2d at 454-57 (ordering remand where agency erred in not granting a continuance); see also *Ullmen*, 67 Ill. App. 3d at 522-23.

CONCLUSION

The judgment of the circuit court is affirmed as to its finding that the ALJ abused his discretion in denying Dr. Wilson's motion to reopen the proceedings, reversed as to its finding that the ALJ abused his discretion in allowing the Medical Examiner's autopsy report into evidence. The circuit court's order vacating the license revocation is itself vacated and this matter is remanded to the Department with directions to allow Dr. Wilson a reasonable continuance to recall his expert witness.

Affirmed in part, reversed in part and remanded for further proceedings before the Department.

CAHILL and BURKE, JJ., concur.

1. Although Dr. Wilson asserts the Department "did not fairly summarize the facts," as pointed out by the Department, Dr. Wilson failed to (1) demonstrate how the Department's statement of facts violated Supreme Court Rule 341(e)(6) (188 Ill. 2d R. 341(e)(6)) or (2) supply a counterstatement of facts supported by citation to the record. Further, that section of Dr. Wilson's brief asserting that the Department's statement of facts is unfair is riddled with argument and cannot itself constitute an appropriate statement of facts as mandated by the rule. See 188 Ill. 2d Rs. 341(f), (e)(6); *Aboufariss v. City of De Kalb*, 305 Ill. App. 3d 1054, 1058, 713 N.E.2d 804 (1999) (statement of facts violating Rule 341(e)(6) (188 Ill. 2d R. 341(e)(6)) will not be considered). Therefore, Dr. Wilson's comments regarding the Department's statement of facts will be disregarded.

2. "'Palliative care' means treatment to provide for the reduction or abatement of pain *** rather than treatment

aimed at investigation and intervention for the purpose of cure or inappropriate prolongation of life." 210 ILCS 60/3(i) (West 1996).

3. Although the Department's Director adopted the Disciplinary Board's findings, the Department's Director did not adopt the Disciplinary Board's recommendations for restoring Dr. Wilson's medical and controlled substance licenses pursuant to *Ala Albazzaz v. Department of Professional Regulation*, 314 Ill. App. 3d 97, 731 N.E.2d 787 (2000).

4. Dr. Wilson contends in his brief that "[t]here were numerous other grounds for reversal of the decision of the [Department] which support [the circuit court's] decision." Dr. Wilson has sought to "incorporate" these by reference to certain documents filed with the circuit court, rather than setting out the arguments *in toto*. We find this "reference" "to other grounds for reversal" to violate Supreme Court Rules 341(e)(7) and (f) (188 Ill. 2d Rs. 341(e)(7) & (f)), the latter of which states that arguments "shall contain the contentions of the party *** with citation of the authorities and the pages of the record relied on" and "[p]oints not argued are waived." Because Dr. Wilson's "incorporated arguments" have not been briefed for this court, we find them forfeited. See generally *Fleming v. County of Kane*, 855 F.2d 496, 498 (7th Cir. 1988) (parties should not adopt briefs previously filed in support of motions at the district court level because it (1) results in a brief in excess of 50 pages and (2) confuses the issues presented).

APPENDIX B

ORDER

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

ROBERT LANCE WILSON,
Plaintiff-Appellee,

v.

THE DEPARTMENT OF PROFESSIONAL REGULATION; NIKKI M. ZOLLAR, former Director of the Department of Professional Regulation; and LEONARD SHERMAN, former Director of the Department of Professional Regulation,

Defendants-Appellants.

ORDER December 26, 2003

This cause coming to be heard on the Plaintiff – Appellee's Petition for Rehearing, the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the Petition for Rehearing is denied _____"s"_____

Justices Cahill, Garcia and Burke

APPENDIX C

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ROBERT LANCE WILSON D.O.,	)	
	)	
vs.	)	No. 00 CH 11057
	)	
ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION, et. al.,	)	

ORDER

This matter coming on for hearing on plaintiff's complaint in administrative review, due notice given, all parties present, the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. For the reasons stated in the record, the order of the Illinois Department of Professional Regulation revoking Dr. Robert Lance Wilson's medical and controlled substance licenses is hereby reversed and vacated.

2. Defendants' oral motion to stay enforcement of this order pending appeal is granted.

ENTERED: April 10, 2002

Attorney No.: 34418

Name: Tom Zimmerman
Atty For: Dr. Wilson Bush
Address: 100 W. Monroe St., Ste. 1300
Chicago/State/Zip: Chicago, IL 60603
Telephone: 312-440-0020

/s/
Judge Bernetta

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX D

ROBERT LANCE WILSON,	)	
	)	
Plaintiff;	)	
	)	
vs	)	No. 00 CH 11057
	)	
DEPARTMENT OF REGULATION,	)	
	)	
Defendant.	)	

REPORT OF PROCEEDINGS

REPORT OF PROCEEDINGS of the hearing before the Honorable BERNETTA BUSH, on the 10th day of April, 2002.
APPEARANCES:

MR. ROBERT HOLSTEIN,
for the petitioner.

MESSRS. TOM ZIMMERMAN and
DEAN ARMSTRONG,
for the plaintiff.

MR. DAVID VANDERBURGT,
for the defendant.

FILED 02 AUG - 7 AM 11:45

Roberta Kay Brown, CSR, RPR
Official Court Reporter
License No. 084-001666
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Chicago, Ill. 60602
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THE COURT: I have had an opportunity to, unlike counsel suggests, to pour through pages of the transcript, to read all of the documents in this case, because I took it to be of significant importance to be sure that I understood all of the issues in the case because it dealt with an issue, or at least potentially an issue, that could have wide ranging affect on both the medical community

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and also Doctor Wilson and that he is being deprived of his liberty. In reviewing the standard in which I would look at this case, the question is whether I would follow the standard of administrative review which would state that if there is anything in the record to support the agency's decision, I was duty bound to affirm that decision, or if I would view this as a matter for de novo review. Given the natures, the issues in the case, the questions of law, whether there was a breach or due process procedures, the court believes that the review that it must utilize in this case is the de novo review because there are questions of law that must be determined, rather than the lesser standard of if there is anything that manifests the evidence to support the agency's decision would be the basis for me in making my determination.

Now, in reviewing those factors from a de novo perspective and taking the issues raised by the parties for the basis of whether I was going to reverse or affirm, I have looked at the breach of the agreement to recall the expert. I think that is like a critical issue in this case because the testimony of the expert goes to what procedures would be appropriate under the circumstances. Is it true that three other doctors testified about what occurred. But the case requires, the case law and the standards require that an expert experienced in the area be allowed to testify. Now, is it true that the parties walked out. It is also true that they should not have been allowed, in my view, to put on their, put on -- they probably should not have been allowed a continuance to put their case on because it was their voluntary decision not to proceed with the case. But their request was to recall the expert in the case, and they were going to let that rest as their entire case. I believe the denial of the allowing them to recall Doctor Waller to give his continued testimony was reversible error. I believe that they had an absolute right to have Doctor Waller recalled, and they would have had to stand on whatever he did. They certainly would have not been able to -- I mean, he denied the continuance, and that was probably proper under the circumstances for them to continue to stay the case. But I think it was import for him to deny the opportunity to recall the expert that he agreed that he allowed them to do, and that is all they planned to put on as their case. He could have certainly denied them the opportunity to put on any additional witnesses. But I think at least in order to make the record complete, because you have had the doctor, the testimony of doctor, the doctor, the name begins with an S, Siegler, Doctor Siegler talking about what the standard of care was, talking about the nature of the injection, whether it can be lethal or not, and that would have cured the problem of the denial of cross-examination, because then

they would have been able to raise and address the issues raised even by doctor, even the question that Doctor Siegler was asked by the panel regarding the nature. I think the refusal to allow him to testify and clear up any issues, because he was the expert, to address the question that Doctor Siegler testified to regarding the amount of time, amount of time, and to allow -- I don't know if you guys continued to cross-examine. Even if you rested, it was clear in the record that they raised some issue regarding the cross-examination, and the hearing officer instructed them that they would be able to make that correction at the time of the, at the time that Doctor Waller was recalled. That alone, in my view, would have corrected all of the other issues that were raised, denial of the cross-examination, whether they complied with the standard of care, whether they failed to prove their charges, because they would have had an opportunity at lease to address those questions through, through their expert. At least that is my view. And I believe the failure to do that is reversible error.
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I am not going to get into whether what the doctor did was incorrect or whether what he did was not correct. That is not what I am looking at at this point. I am looking clearly at the procedural issues in his case. I believe that he had a right to due process of law. I do not believe that due process of law was afforded to him. I also had problems with the fact they did not have an opportunity to challenge the autopsy reports. They did -- while they didn't subpoena the parties or ask to bring them in, they did ask that the evidence of the autopsy be barred because they did not have an opportunity to review the body. I believe that that was a proper motion, and that motion should have been granted. And I believe that in addition to the denial of the expert witness constituted reversible error. I am going to reverse for those reasons.

MR. ZIMMERMAN: Thank you.
MR. VANDERBURGT: Just a straight out reversal. You're not going remanding?
THE COURT: Straight out reversal.

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Not remanding. The reason I am not remanding, I will tell you why I am not remanding. I believe that -- I don't believe, first of all, that they can correct the problem regarding the, regarding the autopsy problem. I don't believe that they can ever correct the fact that that testimony was allowed in and was used as a basis for the department's expert testifying. I don't believe that that is a correctable process. Whether or not -- and it could have been addressed, though, if the expert had been allowed to testify. That is just my belief.
MR. VANDERBURGT: So, the court is determining that there is no way to remedy that by remanding it.
THE COURT: That is correct. There is no way to remedy the inclusion of the autopsy information in the, allowed in. Yeah, that is what I am saying. Right.
MR. VANDERBURGT: The only other thing I need, Your Honor, then, is I would make an oral motion to stay your decision pending appeal.

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THE COURT: That is correct. You have that.
MR. VANDERBURGT: Thank you.
THE COURT: Okay.
MR. ZIMMERMAN: Thank you.
DR. WILSON: Thank you, Your Honor.
WHICH WAS ALL THE PROCEEDINGS HAD IN THE ABOVE ENTITLED CAUSE.
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APPENDIX E

97766

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING SPRINGFIELD,
ILLINOIS 62701
(217) 782-2035

MARCH 24, 2004

Mr. F. Dean Armstrong
F. Dean Armstrong, P.C,
639 Perth
Flossmoor, Il 60422

No. 97766 – Robert Lance Wilson, D.O. petitioner, v. Illinois Department of Professional Regulation et al., ect., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 15, 2004